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| 10/070,467      | 07/11/2002  | Martin John Charles Offa-Jones | THOM-0020           | 4678             |

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EXAMINER

BRITTAIN, JAMES R

ART UNIT PAPER NUMBER

3677

DATE MAILED: 12/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/070,467

Applicant(s)

OFFA-JONES, MARTIN JOHN  
CHARLES

Examiner

James R. Brittain

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 8-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 10.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 8-15 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no description in the application as filed of the first and second posts being “high compression members” (claim 8, lines 4, 8, 9; claim 8, lines 2, 3, 5). There is no description in the specification as filed of “high” compression so as to describe to one of ordinary skill in the art what is now meant by the relative limitation of “high”. The remaining claims contain new matter in that they depend from a claim that contains new matter.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 8 is rejected under 35 U.S.C. §102(b) as being clearly anticipated by Dorman et al. (US 2797463).

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Dorman et al. (figure 3) teaches a reclosable fastener for garments, wearing apparel and other articles, comprising two elements, each element comprising two portions 9, 10 releasably engageable with a two portions 18, 19 of the other element, and each element comprising an upstanding post 14, 30 at the margin of the fastener which is engageable with a heel 31, 15 of the other element at the opposing margin of said other element, wherein the respective posts and heels of the two elements are complementarily angled at their respective contact surfaces. This construction keeps the extreme free edges of the marginal portions of the strips protected and confined thereby preventing accidental lifting and displacement of the free edges of the strip and provides an additional sealing action for the interlocked strips when the engaged strips are subject to a fluid pressure (col. 3, lines 11-39). The fastener comprises the interengaging protruding elements with the cooperating posts and heels. It does not include the extending web portions. This is consistent with applicant's use of the term "comprising", which is well known as an open term permitting the inclusion of other structure. The geometry of the device inherently resists compressive forces. While the device is not stated as being for plastic bags and other containers, the fastener of Dorman is inherently capable of being used for such purposes.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dorman (US 2797463) in view of Bentsen (US 4673383).

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Dorman et al. (figure 3) teaches a reclosable fastener for garments, wearing apparel and other articles, comprising two elements, each element comprising two portions 9, 10 releasably engageable with a two portions 18, 19 of the other element, and each element comprising an upstanding post 14, 30 at the margin of the fastener which is engageable with a heel 31, 15 of the other element at the opposing margin of said other element, wherein the respective posts and heels of the two elements are complementarily angled at their respective contact surfaces. This construction keeps the extreme free edges of the marginal portions of the strips protected and confined thereby preventing accidental lifting and displacement of the free edges of the strip and provides an additional sealing action for the interlocked strips when the engaged strips are subject to a fluid pressure (col. 3, lines 11-39). While the device is not stated as being for plastic bags and other containers, the fastener of Dorman is inherently capable of being used for such purposes. The difference is that the fastening heads 33 of the releasably engageable portions are bulbous not hooks. However, Bentsen (figures 1, 2) teaches that it is old and well known to use two hooks on opposite fastening elements that are engageable with each other so as to form a better seal for bags. It would have been obvious to modify the fastener of Dorman et al. so that the fastening heads of the releasably engageable portions are hooks not bulbous portions in view of Bentsen (figures 1, 2) teaching that it is old and well known to use two hooks on opposite fastening elements that are engageable with each other so as to form a better seal for bags. As to claim 11, it would have been obvious to modify the fastener of Dorman et al. so that ribs are used to secure the base member to the web or film in view of Bentsen teaching reclosable closure structure with a flange extending to the right on the upper member in figure 1 and to the left on the lower member in figure 1 wherein ribs 17 are placed so that there is a single rib at the ends of

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the flanges so as to have securement at the edges of the flanges and there are ribs positioned in alignment with the hooked engagement members. As Bentsen teaches that it is desirable to have ribs extending over the entire surface of the fastener opposite the hooked members so as to have good securement of the fastener to the substrate, it would have been obvious to modify the fastener of Dorman et al. to have ribs in alignment with the post and heel so as to have good securement over the entire width of the fastener.

Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dorman (US 2797463) in view of Bentsen (US 4673383) as applied to claim 11 above, and further in view of Custer et al. (US 5216787).

Further modification of the fastener of Dorman et al. so that sealant material is coextruded onto each rib as shown by Bentsen would have been obvious in view of Custer et al. (figure 3) teaching that it is desirable to do so in order to have intermediate ribs 325 between the closure and adhesive ribs that act as a tie material to better match the material of the closure to that of the adhesive wherein it is desirable to have the materials co-extruded so that there is a stronger securement. Further modification of the fastener of Dorman et al. so that the sealing material is EVA would have been obvious in view of Custer et al. (col. 10, lines 20-24) who teach the use of EVA as being desirable for its bonding qualities.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dorman (US 2797463) in view of Kapperman et al. (US 6004032).

Dorman et al. (figure 3) teaches a reclosable fastener for garments, wearing apparel and other articles, comprising two elements, each element comprising two portions 9, 10 releasably engageable with a two portions 18, 19 of the other element, and each element comprising an

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upstanding post 14, 30 at the margin of the fastener which is engageable with a heel 31, 15 of the other element at the opposing margin of said other element, wherein the respective posts and heels of the two elements are complementarily angled at their respective contact surfaces. This construction keeps the extreme free edges of the marginal portions of the strips protected and confined thereby preventing accidental lifting and displacement of the free edges of the strip and provides an additional sealing action for the interlocked strips when the engaged strips are subject to a fluid pressure (col. 3, lines 11-39). While the device is not stated as being for plastic bags and other containers, the fastener of Dorman is inherently capable of being used for such purposes. The difference is that both fastener elements have a flange. Further modification of the fastener of Dorman et al. so that a single flange is provided on only one of the two interengaging elements of the fastener for engagement to a film or web would have been obvious in view of Kapperman et al. (figure 11) teaching a reclosable fastener comprising a male/female 152, 154 closure between a pair of opposed base members secured to package walls 156, 158 respectively, wherein a single flange extends upwardly from the female member 154 and is inherently capable of being used for attachment of the closure to a web or film through the statement that the female profile 154 is secured to a package wall 158 (col. 9, lines 44-45). There are no flanges extending from either side of the base of the male member 152.

### ***Response to Arguments***

Applicant's arguments filed September 15, 2003 have been fully considered but they are not persuasive.

Applicant's argument revolves around the use of the term "high compression member", but the term "high" is not used in the specification as filed and is new matter. Further, applicant

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attempts to argue that the posts of the device of Dorman et al. are not “posts”, but “lips” since applicant believes that the configuration shown by Dorman et al. only shows lips. However, the claims make no distinction regarding the relative height of the posts until claim 14, which is not rejected on art. Applicant attempts to argue that the geometry of the device of Dorman et al. only resists lateral deformation. But this is completely unpersuasive because the geometry of the beveled surfaces obviously aids in resisting compressive forces in the identical manner of applicant’s device. Applicant is reminded that “[I]n considering the disclosure of a reference, it is proper to take into account not only specific teachings of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom.” *In re Preda*, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968). To point out identical beveled structures from the reference in comparison to applicant’s device and somehow argue a different result is without merit. Applicant also argues in the second paragraph of page 7 of the Remarks that Dorman et al. fails to teach or suggest all of the claim limitations because the web and marginal portions extend laterally away from the zones where the heels and posts are located. The problem with this argument is again that applicant obviously has a flange 16 extending laterally away from the post 24 and claims it in claim 15. It’s not clear how applicant can argue claim language in a vacuum without the obvious linkage with applicant’s own structure which has a laterally extending flange. Applicant’s claim language utilizes the open term “comprising” and is appropriate because it permits additional structure such as the lateral flange of claim 15. Obviously, the lateral structure shown by Dorman et al. is also permitted within the scope of applicant’s claim just as much as applicant’s laterally extending flange is permitted within the scope of claim 8 and is a proper rejection.



*Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James R. Brittain whose telephone number is 703-308-2222. The examiner can normally be reached on M, W & F 5:30-1:30, T 5:30-2:00 & TH 5:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on 703-306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9326.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.



James R. Brittain  
Primary Examiner  
Art Unit 3677

JRB